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Dated: July 3, 2007 Signature: Samantha Kameros  
(Samantha M. Kameros)

*Handwritten:* 1655

Docket No.: REGIM 3.3-012  
(PATENT)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:  
Msika et al.

Application No.: 10/088,851                      Group Art Unit: 1655  
Filed: March 21, 2002                      Examiner: M. C. Flood  
For: USE OF A PLANT OIL PRODUCT AS AN  
AGENT FOR INCREASING THE  
SYNTHESIS OF SKIN LIPIDS

RESPONSE TO RESTRICTION REQUIREMENT

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

This communication is in response to the Office Action mailed May 3, 2007, setting forth an election of species requirement in the above-identified application. In the Office Action, the Examiner required election of a single disclosed species for each of the following under 35 U.S.C. §121:

- I. The allegedly independent and separate species of the Markush groups of Claims 61 and 88, namely, oil distillate of sunflower oil and unsaponifiable materials from sunflower oil.
- II. The allegedly independent and separate species of the Markush groups of Claims 61 and 88, namely, sensitive skin, dry skin, pruritus, ichthyosis, acne, xerosis, atopic dermatitis,

cutaneous desquamation, and skin subjected to actinic radiation or skin subjected to ultraviolet (UV) radiation.

III. The allegedly independent and separate species of the Markush groups of Claim 77, namely topically, orally, enterally or parenterally.

In response, Applicants hereby elect the species as follows: unsaponifiable materials from sunflower oil; atopic dermatitis; and topical administration. This election is made with traverse.

With regard to the election of Group I, oil distillate of sunflower oil is oil which contains a fraction rich in unsaponifiable materials. The remaining part is composed of sunflower oil triglycerides. (See specification, page 3, line 35 to page 4, line 8.) Consequently, Applicant respectfully submits that these species do not contain different chemical constituents have divergently different biological and/or biochemical functions. The biological and/or biochemical functions of oil distillate of sunflower oil and unsaponifiable materials from sunflower oil are clearly related, and a search for oil distillate of sunflower oil and unsaponifiable materials from sunflower oil should be co-extensive. Thus, no additional burden is created on the office by searching both of these allegedly distinct species together.

With regard to the election of Group II, Applicants respectfully submit that the conditions listed in the claims are all skin conditions of the epidermis, or the outer layer of the skin. Consequently, Applicant respectfully submits that these skin conditions are not characterized by divergently different clinical manifestations, etc., as alleged by the examiner. The

skin conditions are clearly related, and a search for the listed skin conditions should be co-extensive. Thus, no additional burden is created on the office by searching both of these allegedly distinct species together.

With regard to the election of Group III, Applicants respectfully submit that the routes of administration listed in the claims are all typical methods of administration of any composition or therapeutic agent. These routes of administration are not separated in the art by their mode of absorption or action within the body. A search for the listed routes of administration should be co-extensive. Thus, no additional burden is created on the office by searching these allegedly distinct species together.

Finally, with regard to the elections of Groups I, II, and III, Applicants note that this is the second restriction/election of species requirement that comes subsequent to Applicants' filing of an RCE. Prior to filing the RCE, Applicants had responded to an Official Action which was a rejection of similar claims, wherein all of the alleged species, from Groups I, II, and III, were searched together. Applicants have already significantly restricted the scope of the pending claims in order to facilitate prosecution of this case on the merits. The restrictions requested in the present official action will only cause piecemeal prosecution of this application which is unfair to the Applicants, and unnecessary and unreasonable under the office rules.

For all of the foregoing reasons, reconsideration of the species elections requirements and examination of all the species are respectfully requested and considered to be appropriate in this case.

In the event any fee is due in connection with the present response, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

Dated: July 3, 2007

Respectfully submitted,

By Samantha Kameros  
Samantha M. Kameros  
Registration No.: 50,631  
LERNER, DAVID, LITTENBERG,  
KRUMHOLZ & MENTLIK, LLP  
600 South Avenue West  
Westfield, New Jersey 07090

(908) 654-5000  
Attorney for Applicant